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202-429-9355

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

No NOV 22 1982

Dgto

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ICC Washington D.C.

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Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Attention: Ms. Mildred Lee
Recordations Unit

Subject: Seminole Electric Cooperative, Inc./Xerox
Services, Inc.
Leveraged Lease of 200 Railroad Cars

Dear Ms. Lee:

In accordance with the procedure set forth in Part 1116 of 49 CFR, we are forwarding the enclosed Equipment Lease (the "Lease") dated as of November 1, 1982 among The Connecticut Bank and Trust Company and F.W. Kawam, as Lessor, and Seminole Electric Cooperative, Inc., as Lessee, for filing in accordance with 49 U.S.C. § 11303. The following is a brief description of this transaction:

The Connecticut Bank and Trust Company, as corporate trustee and F.W. Kawam, as individual trustee (collectively the "Owner Trustees") will own the

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RECEIVED

Connecticut Bank and Trust Company
Glenn Moore

Secretary
Interstate Commerce Commission
November 22, 1982
Page 2

railroad cars in accordance with a certain Trust Agreement dated as of November 1, 1982 between them and Xerox Services, Inc., as Beneficiary (the "Beneficiary"). The railroad cars, which are being manufactured by Ortner Freight Car Company (the "Vendor"), will be leased pursuant to the Lease. Part of the funding for this transaction will come from a loan made to the Owner Trustees by National Cooperative Services Corporation, as Lender (the "Lender"). Southeast Bank, N.A. will serve as Indenture Trustee for the Lender (the "Indenture Trustee") under a Trust Indenture dated as of November 1, 1982 (the "Trust Indenture") which was filed with your office on November 16, 1982 (File No. 13846). We are today making a supplemental filing in connection with that filing also. The Trust Indenture will secure the loan made by the Lender (as well as any refinancing of such loan which is secured by the Trust Indenture).

The addressees of the parties are as follows:

<u>Owner Trustee</u>	One Constitution Plaza Hartford, Connecticut 06115
<u>Beneficiary</u>	2 Pickwick Plaza Greenwich, Connecticut 06830
<u>Vendor</u>	6040 Fidelity Drive Milford, Ohio 45150
<u>Lessee</u>	16313 North Dale Mabry Highway Tampa, Florida 33618
<u>Lender</u>	1115 30th Street, N.W. Washington, D.C. 20007
<u>Indenture Trustee</u>	100 South Biscayne Blvd. Miami, Florida 22131

Secretary
Interstate Commerce Commission
November 22, 1982
Page 3

The equipment subject to the Lease is as follows:

two hundred (200), 4,000 cubic foot flat bottom gondola cars, 100-ton nominal capacity for rotary dumping having an A.A.R. mechanical description of G 092, and having the following road numbers:

SEMEX 82000 - SEMEX 82047
SEMEX 82900 - SEMEX 82901
SEMEX 82048 - SEMEX 82097
SEMEX 83100 - SEMEX 83197
SEMEX 83902 - SEMEX 83903

All cars bear the inscription:

"Ownership subject to a Security Agreement between the Connecticut Bank and Trust Company and F.W. Kawam, Trustees, Owner; Southeast Bank, N.A., Indenture Trustee, Secured Party, filed under the Interstate Commerce Act."

The original document should be returned to us. Thank you very much.

Very truly yours,

Robert B. Michel

Robert B. Michel
Counsel to Lessee

Enclosure

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

Robert B. Michel
Mudge Rose Guthrie &
Alexander
2121 K Street, N. W.
Washington, D. C. 20037

November 22, 1982

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/22/82 at 11:35AM , and assigned re-recording number(s). 13852, & 13846-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

NOV 22 1982 -11 55 AM

INTERSTATE COMMERCE COMMISSION

CERTAIN OF THE RIGHTS OF THE LESSOR UNDER THIS
EQUIPMENT LEASE AND IN ALL EQUIPMENT COVERED HEREBY
HAVE BEEN ASSIGNED TO, AND ARE SUBJECT TO A SECURITY
INTEREST IN FAVOR OF, SOUTHEAST BANK, N.A., AS
INDENTURE TRUSTEE UNDER A TRUST INDENTURE DATED AS OF
NOVEMBER 1, 1982. THIS EQUIPMENT LEASE HAS BEEN
EXECUTED IN COUNTERPARTS. SEE SECTION 23(e) HEREOF FOR
INFORMATION CONCERNING THE RIGHTS OF HOLDERS OF THE
VARIOUS COUNTERPARTS.

EQUIPMENT LEASE

Dated as of November 1, 1982

between

THE CONNECTICUT BANK AND TRUST COMPANY and F. W. KAWAM,
not in their individual capacities, but solely
as trustees under a Trust Agreement
dated as of November 1, 1982,
as Lessor

and

SEMINOLE ELECTRIC COOPERATIVE, INC.,
as Lessee

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EQUIPMENT LEASE

EQUIPMENT LEASE dated as of November 1, 1982 (this Lease) between **THE CONNECTICUT BANK AND TRUST COMPANY**, a Connecticut banking corporation, and **F. W. KAWAM**, not in their individual capacities, but solely as trustees under a Trust Agreement dated as of November 1, 1982 (the Lessor), and **SEMINOLE ELECTRIC COOPERATIVE, INC.**, a Florida corporation (the Lessee).

SECTION 1. Definitions; Construction of References.

In this Lease, unless the context otherwise requires:

(a) All references in this Lease to designated Sections and other subdivisions are to designated Sections and other subdivisions of this Lease, and the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision.

(b) The terms defined in this Section or elsewhere in this Lease shall, for purposes of this Lease and all Exhibits hereto, have the meanings assigned to them in this Section or elsewhere and include the plural as well as the singular and the singular as well as the plural.

(c) Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

(d) The following terms shall have the following meanings for all purposes of this Lease:

Abatements shall have the meaning set forth in Section 5 hereof.

Additional Amount shall mean, with respect to each Basic Rent Date, an amount equal to the difference between (a) the amount of interest actually payable on the Notes and (b) the amount of interest which would have been payable on the Notes had the Notes borne interest at the rate of 11.75% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months), in each case, from and including the Basic Rent Date next preceding such Basic Rent Date to but excluding such Basic Rent Date. Each Additional Amount may be positive, negative or zero.

Appraisal shall mean a procedure whereby two independent appraisers, neither of whom shall be the Vendor, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the amount in question. If either party shall have given notice to the other requesting a determination by Appraisal, within 15 days after the making of such request, the Lessor or the Lessee shall each deliver a written notice to the other party appointing its appraiser. If only one appraiser shall have been appointed within such 15 day period, the decision of the appraiser so appointed shall be final. If within 15 days after appointment of the two appraisers, as described above, the two appraisers are unable to agree upon the amount in question, a third independent appraiser, who shall not be the Vendor, shall be chosen within five days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association or any organization successor thereto. The decision of the third appraiser so appointed and chosen shall be given within 10 days after the selection of such third appraiser and, upon receipt of such decision, the amount in question shall be definitively determined by the decision of such third appraiser and thereafter such amount shall be binding and conclusive on the Lessor and the Lessee. The Lessee and the Lessor shall share equally the fees and expenses of all the appraisers appointed hereunder.

Basic Lease Rate Factor shall mean 5.121199% with respect to each Basic Rent Date from and including the First Basic Rent Date to and including July 1, 1989, and 6.259243% with respect to each Basic Rent Date from and including January 1, 1990 to and including the Last Basic Rent Date as such percentages may be adjusted from time to time pursuant to Sections 3(e) and 10(d)(ii) hereof; **provided, however,** that if the Lessee shall make the ITC Election, Basic Lease Rate Factor shall mean a percentage of Lessor's Cost for each Item of Equipment with respect to each Basic Rent Date from and including the First Basic Rent Date to and including July 1, 1989 and a percentage of Lessor's Cost for each Item of Equipment with respect to each Basic Rent Date from and including January 1, 1990 to and including the Last Basic Rent Date, as such percentages are determined by the Beneficiary at the time of the ITC Election pursuant to Section 3(b) of the Participation Agreement and as such percentages may be further adjusted from time to time pursuant to Sections 3(e) and 10(d)(ii) hereof.

Basic Lease Term in respect of an Item of Equipment shall mean the period from July 1, 1983 through the Last Basic Rent Date.

Basic Rent, Supplemental Rent and Rent shall have the meanings set forth in Section 3 hereof.

Basic Rent Dates in respect of an Item of Equipment shall mean January 1 and July 1 of each year commencing January 1, 1984.

Beneficiary shall mean XEROX SERVICES, INC., a Delaware corporation.

Business Day shall mean any day other than a Saturday, Sunday or other day on which banks in the City of New York, New York, Tampa or Miami, Florida, or Hartford, Connecticut are authorized to close.

Casualty Value and **Termination Value** shall have the meanings set forth in Exhibit C hereto as such Values may be adjusted from time to time pursuant to Section 11(g) of the Participation Agreement and Sections 3(e) and 10(d)(ii) hereof; **provided, however,** that if the Lessee shall make the ITC Election, Casualty Value and Termination Value shall be adjusted in accordance with section 3(b) of the Participation Agreement as such adjusted Values may be further adjusted from time to time pursuant to Sections 3(e) and 10(d)(ii) hereof and **provided, further, however,** that such amounts as of any date shall be in no event less than a sum sufficient to pay in full the unpaid principal amount of the Notes outstanding on such date, together with accrued interest thereon to the date of payment and any premium payable with respect thereto.

Certificate of Acceptance shall mean a certificate of acceptance substantially in the form of Exhibit B hereto.

Change in Law shall have the meaning set forth in Section 3(e) hereof.

Claims shall have the meaning set forth in Section 14 hereof.

Closing Date shall mean, with respect to any Item of Equipment, the date on which payment for such Item of Equipment is made to the Vendor, or such other party as may be designated or authorized to receive such payment, which date shall occur upon not less than three Business Days' prior written notification of such date delivered by the Lessee to the Lessor and the Indenture Trustee or on such other date as may be agreed upon by such parties. Without such notice or agreement, the Closing Dates shall occur on November 19, 1982, December 10, 1982 and May 15, 1983. No Closing Date shall occur between the dates of December 22, 1982 to January 1, 1983.

Code shall mean the Internal Revenue Code of 1954, as amended to the date hereof.

Cut-Off Date shall mean June 30, 1983.

Default shall mean an event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default.

Document Closing Date shall have the meaning set forth in the Participation Agreement.

Equipment, and individually an **Item of Equipment** or **Item**, shall have the meaning set forth in Section 2 hereof.

Equipment Contract shall have the meaning set forth in the Participation Agreement.

Estimated Lessor's Cost shall mean the amount set forth in Exhibit A hereto.

Event of Default shall have the meaning set forth in Section 19 hereof.

Event of Loss with respect to any Item of Equipment shall mean any of the following events: (i) loss of such Item or of the use thereof due to theft, disappearance, destruction, damage beyond repair or rendition of such Item permanently unfit for commercial operation for any reason whatsoever; (ii) any damage to such Item which results in an insurance settlement with respect to such Item on the basis of a total loss; or (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, such Item (**Requisition of Use**) by the act of the United States government or any state or local authority within the United States or any instrumentality or agency of the foregoing should such Requisition of Use result in a taking of title to or loss of use of such Item of Equipment for 90 days or more. The date of such Event of Loss shall be the date of such theft, disappearance, destruction, damage, rendition or the first date on which a Requisition of Use shall have occurred.

Expiration Date shall mean July 1, 2001.

Fair Market Rental Value of an Item of Equipment shall be determined on the basis of, and shall mean the amount which would be obtainable in, an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) under no compulsion to lease and an informed and willing lessor under no compulsion to lease, in accordance with a lease on terms and conditions as herein provided, **provided, however**, that in determining

such amount it shall be assumed that such Item is in the condition required by Section 6(a) hereof. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental Value with respect to such Item, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal.

Fair Market Value of an Item of Equipment shall be determined on the basis of, and shall mean the amount which would be obtainable in, an arm's-length transaction between an informed and willing buyer or user (other than (i) a lessee currently in possession, or (ii) a used equipment dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell, and in such determination costs of removal from the location of current use (including dismantling, shipping and reconstruction) shall not be a deduction from such value and all alternative uses in the hands of such buyer or user, including without limitation, the further leasing of such Item, shall be taken into account in making such determination; **provided, however,** that in determining such amount it shall be assumed that such Item is in the condition required by Section 6(a) hereof. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Value with respect to such Item, such Fair Market Value shall be determined in accordance with the procedure for Appraisal.

First Basic Rent Date shall mean January 1, 1984.

First Termination Date shall mean January 1, 1989.

Impositions shall have the meaning set forth in Section 9 hereof.

Improvement shall mean any accessory, equipment or device affixed to or installed upon any Item of Equipment or any improvement, modification, alteration or addition thereto.

Indenture shall mean the Trust Indenture dated as of November 1, 1982 between the Indenture Trustee and the Lessor.

Indenture Trustee shall mean SOUTHEAST BANK, N.A., a national banking association.

Interim Lease Term shall mean, with respect to each Item of Equipment, the period from the Closing Date for such Item to and including June 30, 1983.

ITC Election shall have the meaning set forth in the Participation Agreement.

Last Basic Rent Date shall mean July 1, 2001.

Late Payment Rate shall mean one percentum (1%) above the rate of interest announced publicly from time to time by Citibank, N.A. in New York, New York as Citibank's base rate.

Lease Extension Period shall have the meaning set forth in Section 17 hereof.

Lender shall mean NATIONAL COOPERATIVE SERVICES CORPORATION, a cooperative corporation organized under the laws of the District of Columbia.

Lessor's Cost of an Item of Equipment shall mean the amount set forth in the Certificate of Acceptance therefor under the caption "Lessor's Cost", which amount shall equal the sum of (i) the amount payable to the Vendor on the Closing Date for such Item pursuant to the applicable Purchase Documents and (ii) the amount payable to the Lessee in respect of progress payments made by the Lessee to the Vendor under the Equipment Contract.

Lessor's Expenses shall mean with respect to an Item of Equipment the amount set forth in the Certificate of Acceptance for such Item under the caption "Lessor's Expenses", which amount shall represent the amount of invoiced Transaction Expenses payable in respect of, or in the reasonable judgment of the Lessee and the Beneficiary allocable to, such Item.

Liens and Lessor's Liens shall have the meanings set forth in Section 6 hereof.

Net Economic Return shall have the meaning set forth in the Participation Agreement.

Nonseverable Improvement shall mean any Improvement which is defined as a "Nonseverable Improvement" in Revenue Procedure 79-48, 1979-2 Cum. Bull. 529, as amended or supplemented from time to time, if the conditions of section 4(4).03(B) of said Revenue Procedure are satisfied and the Nonseverable Improvement is described in at least one of the subparagraphs of section 4(4).03(C) of said Revenue Procedure.

Notes shall mean those promissory notes, defined as the **Notes** in the Indenture.

Overdue Rate shall have the meaning set forth in the Indenture.

Participation Agreement shall mean the Participation Agreement dated as of November 1, 1982 among the Lessor, the Indenture Trustee, the Beneficiary, the Lender, and the Lessee, as

the same may from time to time be supplemented, amended, waived or modified.

Parts shall mean all appliances, parts, instruments, appurtenances, accessories and other equipment of whatever nature, which may from time to time be incorporated or installed in or attached to an Item of Equipment.

Person shall mean any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

Proceeds of Re-letting shall have the meaning set forth in Section 20(a) hereof.

Purchase Documents shall mean those documents defined as **Purchase Documents** in the Participation Agreement.

REA Mortgage shall have the meaning set forth in the Participation Agreement.

Replacement Parts shall have the meaning set forth in Section 10 hereof.

Requisition of Use, see Event of Loss.

Series 1 Note shall have the meaning set forth in the Indenture.

Series 2 Notes shall have the meaning set forth in the Indenture.

Severable Improvement shall mean any Improvement which is defined as a "Severable Improvement" in Revenue Procedure 79-48, 1979-2 Cum. Bull. 529, as amended or supplemented from time to time.

Tax Assumptions shall mean the assumptions set forth in paragraph (a) of Section 11 of the Participation Agreement.

Termination Date shall have the meaning set forth in Section 16 hereof.

Transaction Expenses shall have the meaning set forth in the Participation Agreement.

Trust Agreement shall mean the Trust Agreement dated as of November 1, 1982 between the Lessor and the Beneficiary.

Vendor shall mean Ortner Freight Car Company, a Delaware corporation.

SECTION 2. Acceptance and Lease of Equipment.

Subject to the satisfaction of the terms and conditions of Section 10 of the Participation Agreement, the Lessor hereby agrees to accept delivery from the Vendor under the applicable Purchase Documents and simultaneously to lease to the Lessee, and the Lessee hereby unconditionally agrees to lease from the Lessor, such items of equipment described in Exhibit A hereto as the Lessor shall have accepted, or become obligated to pay for, pursuant to the applicable Purchase Documents (the **Equipment**, and individually an **Item of Equipment** or **Item**). Upon satisfaction of the aforementioned terms and conditions and delivery of each Item of Equipment to the Lessor from the Vendor on or before the Cut-Off Date, the Lessee will cause an authorized representative of the Lessee to inspect the same and either (a), if such Item of Equipment is found to be in good order, to accept such Item of Equipment on behalf of the Lessor as its authorized representative pursuant to Section 4 hereof and on its own behalf as Lessee and to execute and deliver a Certificate of Acceptance with respect thereto, or (b) if the Lessee, acting in good faith, should find that such Item of Equipment is not in good order, return the same to the Vendor. Each Item of Equipment shall be subject to the terms and conditions of this Lease from the date the Lessor shall have accepted, or become obligated to pay for, such Item of Equipment.

SECTION 3. Term and Rent.

(a) **Term.** The term of this Lease shall begin, with respect to each Item of Equipment described in Exhibit A hereto, on the date such Item of Equipment becomes an Item of Equipment hereunder and shall end on the Expiration Date, unless this Lease shall have been terminated, or the term of this Lease shall have been extended, by the terms hereof.

(b) **Basic Rent.** No rent shall be payable by the Lessee hereunder during the Interim Lease Term. The Lessee shall pay to the Lessor, as basic rent (herein referred to as **Basic Rent**), the following:

(1) on each Basic Rent Date occurring from and including the First Basic Rent Date to and including the Last Basic Rent Date, an amount equal to the sum of (i) the Basic Lease Rate Factor with respect to such Basic Rent Date multiplied by the Lessor's Cost of each Item of Equipment, and (ii) the Additional Amount with respect to such Basic Rent Date; and

(2) on each Basic Rent Date occurring during the Lease Extension Period, an amount determined in accordance with Section 17 hereof.

Anything herein contained to the contrary notwithstanding, each payment of Basic Rent hereunder occurring during the term of this Lease shall be, under any circumstance and in any event, in an amount at least sufficient to pay in full, as of the applicable Basic Rent Date, any payments then required to be made on account of the principal of, premium, if any, and interest on any Note then outstanding. In addition, the Lessee agrees not to prepay any payment of Basic Rent except as specifically provided by the terms hereof.

(c) **Supplemental Rent.** The Lessee shall pay to the Lessor or such other party as may be appropriate the following amounts (herein referred to as **Supplemental Rent** and, together with all Basic Rent, as **Rent**):

(1) on demand, any amount payable hereunder (other than Basic Rent, Casualty Value and Termination Value) which the Lessee assumes the obligation to pay, or agrees to pay, under this Lease to the Lessor or others (including, without limitation, the continuing fees and expenses of the Lessor and Indenture Trustee as provided in section 9(g) of the Participation Agreement);

(2) on the date provided herein, any amount payable hereunder as Casualty Value or Termination Value; and

(3) on demand, to the extent permitted by applicable law, interest (computed on the basis of a 360-day year and actual days elapsed) at (A) the Overdue Rate on that portion of Rent which is equal to the amount payable pursuant to the Notes and the Indenture and (B) the Late Payment Rate on the remaining portion of Rent, on any payment of Rent not paid when due for any period during which the same shall be overdue.

The expiration or other termination of the Lessee's obligation to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent. Anything herein contained to the contrary notwithstanding, any payment of Casualty Value or Termination Value hereunder shall be, under any circumstance and in any event, in an amount at least sufficient to pay in full, as of the applicable Basic Rent Date or other date as of which such Casualty Value or Termination Value shall be determined, any payments then required to be made on account of the principal of, premium, if any, and interest on the Notes then outstanding.

(d) **Place of Payment.** All payments of Rent hereunder shall be made to the Lessor at their office at One Constitution Plaza, Hartford, Connecticut 06115, Attention: Corporate Trust Department or as otherwise provided in the Indenture, in immediately available funds (in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts) no later than 11:00 A.M. New York, New York time on the date payable hereunder. Upon payment of all outstanding Notes, all payments of Rent thereafter made hereunder shall be made as aforesaid except that such payments shall be made to the Person to whom such amounts are then payable.

(e) **Adjustments.** The Basic Lease Rate Factor, the Casualty Values and the Termination Values have been calculated by the Beneficiary on the basis of the Tax Assumptions. If (i) the relevant factors with respect to the transactions contemplated hereby and by the Participation Agreement, as known to the Beneficiary on and as of the Cut-Off Date, shall vary from the Tax Assumptions, or (ii) there shall be a change or modification of the applicable income tax laws or regulations which is enacted and becomes effective on or before the later of December 31, 1983 or the last Closing Date (**Change in Law**), or (iii) the Items of Equipment shall not be delivered in accordance with the schedule of Closing Dates set forth on Exhibit D hereto, the Basic Lease Rate Factor, the Casualty Values and the Termination Values shall be calculated and adjusted (upward or downward) by the Beneficiary, acting through the Lessor, on and as of July 1, 1983, in accordance with applicable guidelines of the Internal Revenue Service, to the extent necessary to preserve the Net Economic Return, computed by the same method and utilizing the same parameters as utilized by the Beneficiary in originally evaluating the transactions contemplated hereby and by the Participation Agreement **provided, however,** that the Beneficiary shall in all cases hereunder (notwithstanding the parameters originally utilized) determine the extent to which (and periods when) it then anticipates having sufficient taxable income and tax liability to utilize, or suffer any adverse effects of, such Change in Law, treating the incremental tax benefits resulting from such Change in Law as the last deduction or other benefit to be utilized, but taking into account prior and current transactions (including transactions then awarded to the Beneficiary or any of its affiliates), and not prospective transactions, **and, provided, further,** that in no event shall any such adjustment reduce any payment below the amount required (A) to maintain the Net Economic Return and (B) to pay in full the principal, premium, if any, and interest then due on the Notes. Such adjustment or calculation shall become effective on the date of the change which caused such adjustment or calculation to be necessary whether or not a supplement to this Lease shall have been entered into.

(f) **Lessee's Right of Review.** Whenever the terms of this Lease (including, without limitation, the terms of paragraph (e) of this Section and the terms of paragraph (d) of Section 10 or if the ITC Election is made by the Lessee pursuant to Section 3(b) of the Participation Agreement) shall require adjustment of the Basic Lease Rate Factor, the Casualty Values and the Termination Values so as to preserve the Net Economic Return of the Beneficiary, the Lessee shall have the right, upon demand made within 10 days of receipt from the Beneficiary, acting through the Lessor, of notice of such adjustment, to have Blyth Eastman Paine Webber Incorporated review the computations made by the Beneficiary in connection with such adjustment to verify the accuracy of such computations and the consistency of the method and parameters utilized by the Beneficiary with respect thereto. If the conclusions reached by Blyth Eastman Paine Webber Incorporated are not acceptable to the Lessee and to the Beneficiary, the Lessee and Beneficiary shall each have the right, upon demand, to have a firm of independent certified public accountants selected by the Beneficiary review the computations made by the Beneficiary and Blyth Eastman Paine Webber Incorporated to verify the accuracy of such computations and the consistency of the method and parameters used with respect thereto. The conclusion reached by such firm of independent certified public accountants shall be subject to the approval of the Beneficiary, acting in its sole discretion; and, if the Beneficiary does not approve such conclusion, the ITC Election shall be deemed to be revoked. All costs and expenses which may be incurred under this paragraph shall be paid by the Lessee.

SECTION 4. Appointment of Representative.

(a) **Appointment of Authorized Representative.** For purposes of accepting delivery of each Item of Equipment from the Vendor, the Lessor hereby appoints the Lessee as authorized representative of the Lessor. Until such authority shall have been terminated pursuant to paragraph (b) of this Section, such authorized representative shall be authorized to take possession of each Item of Equipment upon the delivery thereof to the Lessee by the Vendor, to accept on behalf of the Lessor all Purchase Documents, if any, delivered at such time with respect to such Item of Equipment, either to accept delivery of such Item of Equipment on behalf of the Lessor if it is found to be in good order or to return to the Vendor such Item of Equipment if it is found not to be in good order, and to take such other action on behalf of the Lessor as shall be required to accept delivery of or to return such Item of Equipment. The Lessee hereby agrees that the acceptance of delivery of each Item of Equipment by the Lessee as such authorized representative shall, without further act, irrevocably constitute acceptance by the Lessee of such Item of Equipment for all purposes of this Lease.

(b) **Termination of Appointment of Authorized Representative.** The authority of the authorized representative granted pursuant to paragraph (a) of this Section shall terminate upon notice to the Lessee by the Lessor.

SECTION 5. Net Lease.

This Lease is a net lease, and the Lessee acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment (**Abatements**) for any reason whatsoever, including, without limitation, Abatements due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise, against the Vendor, or against any other Person for whatever reason. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the obligations of the Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, the Equipment or any part thereof from whatsoever cause, or the interference with the use thereof by the Lessor or any Person, any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee or the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, or any failure of the Lessor to perform any obligation of the Lessor to the Lessee or any other Person under this Lease or any instrument or document executed in connection herewith, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding, it being the express intention of the Lessor and the Lessee that all Rent payable by the Lessee hereunder shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. The Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, the Lessee nonetheless agrees to pay to the Lessor an amount equal to each Rent payment at the time such payment would have become due and payable in accordance with terms hereof had this Lease not been terminated in whole or in part. Each Rent payment made by the Lessee shall be final and the Lessee will not seek or have any right to recover all or any part of such payment from the Lessor, the Beneficiary, the Indenture Trustee, or the Lender for any reason whatsoever.

SECTION 6. Return of Equipment.

(a) Upon the expiration or termination of this Lease with respect to an Item of Equipment, the Lessee, at its own risk and expense, shall deliver possession of such Item of Equipment to the Lessor at any destination within the continental United States specified in writing by the Lessor, such Item of Equipment to be in the condition in which it is required to be maintained pursuant to Section 10 hereof. Each Item of Equipment, upon redelivery pursuant hereto, shall be free and clear of all mortgages, liens, security interests, charges, claims or other encumbrances (Liens), other than Liens either (i) created or granted by the Lessor, including any such Liens created or granted in connection with the purchase or financing of such Item of Equipment, or (ii) resulting from claims against the Lessor not related to the Lessor's ownership of such Item of Equipment or to the Lessor's administration of the Trust Estate (as defined in the Trust Agreement) (Liens described in clauses (i) and (ii) above being herein referred to as **Lessor's Liens**).

(b) At the option of the Lessor, Lessee will provide for the storage of the Items of Equipment (at a location of the Lessee's choice) for up to (i) 90 days after the expiration of the Basic Lease Term (or earlier if this Lease is terminated pursuant to Section 16 hereof) or any Lease Extension Period or (ii) 120 days upon termination of this Lease following an Event of Default under Section 19 hereof, as the case may be, at Lessee's expense and risk, including, but not limited to, providing insurance as required in Section 13 hereof.

SECTION 7. Warranty of the Lessor.

(a) **Quiet Enjoyment.** The Lessor warrants that during the term of this Lease, if no Event of Default has occurred, the Lessee's use of the Equipment shall not be interrupted by the Lessor or anyone claiming solely through or under the Lessor.

(b) **No Other Warranties.** The warranties set forth in paragraph (a) of this Section are in lieu of all other warranties of the Lessor, whether written, oral or implied, with respect to this Lease or the Equipment, and the Lessor shall not be deemed to have modified in any respect the obligations of the Lessee pursuant to Section 5 hereof, which obligations are absolute and unconditional. **THE LESSEE EXPRESSLY AGREES TO LEASE THE EQUIPMENT "AS IS". THE LESSOR SHALL NOT BE DEEMED TO HAVE MADE, AND THE LESSOR HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE TITLE, DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT,**

ITS VALUE OR CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE AGREEMENT OR AGREEMENTS RELATING THERETO, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, OR ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE LENDER'S, LESSOR'S OR BENEFICIARY'S NEGLIGENCE, ACTUAL OR IMPUTED, OR WHETHER OR NOT FOUNDED IN ABSOLUTE OR STRICT LIABILITY IN TORT NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, REVENUE OR PROFIT WITH RESPECT TO ANY ITEM OR LIABILITY TO ANY THIRD PARTY). In addition, acceptance by the Lessee of any Item under this Lease shall be conclusive proof, as between the Lessor and the Lessee, that such Item is in accordance with specifications, in good working order and repair and without defect or inherent vice in title, condition, design, operation or fitness for use, whether or not discoverable by the Lessor or the Lessee as of the date of such tender, and free and clear of all liens, charges and encumbrances; **provided, however,** that nothing contained herein shall in any way diminish or otherwise affect any right either the Lessor or the Lessee may have against the Vendor, and the Lessor hereby assigns to the Lessee and authorizes the Lessee, at the Lessee's expense, to assert for the Lessor's account, during the term of this Lease, so long as no Event of Default shall have occurred hereunder, all of the Lessor's rights under any applicable Vendor's warranty and the Lessor agrees to cooperate with the Lessee in asserting such rights; **provided, however,** that the Lessee shall indemnify the Lessor and hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the Lessor in connection with, as a result of, or incidental to, any action by the Lessee pursuant to the above authorization. The Lessee shall promptly notify the Lessor and the Beneficiary of any breach of any such warranty or indemnity. The Lessee shall inform the Lessor and the Beneficiary of any legal action proposed to be brought by it, or negotiations proposed to be entered into by it, to enforce such warranties and indemnities and shall afford the Lessor and the Beneficiary adequate opportunity to participate or intervene in such actions or negotiations as they may desire. The Lessor shall otherwise take, at the Lessee's expense, any action which the Lessee may reasonably request in order that the Lessee may fully obtain the benefits of the foregoing assignment. Notwithstanding the foregoing assignment and authorization, the Lessee agrees to use due diligence to enforce and assert all such warranty and indemnity rights which would have a material effect upon the value of any of the Items. The Lessee will cause any payments resulting from enforcement of such warranty or indemnity to be made to the Lessee if no Default or Event of Default shall have occurred and be continuing, **provided that,** in any event, such payments shall be applied as follows: (i) in case the breach of such warranty or indemnity contributed to an Event of Loss with respect to any Item, first, in reduction of the Lessee's obligation to pay Casualty Value and any other amounts due the Lessor under Section 12 hereof with

respect to such Item if not already paid by the Lessee or, if already paid by the Lessee, to reimburse the Lessee for its payment of such Casualty Value and such other amounts, and **second**, to compensate the Lessee for all other losses or expenses, including reasonable attorneys' fees and costs, incurred by it as a result of such breach of warranty or indemnity, and the balance, if any, shall be paid over to or retained by the Lessor; and (ii) in case the breach of such warranty or indemnity did not contribute to an Event of Loss, **first**, to the proper repair and maintenance of any Item with respect to which such warranty or indemnity was breached in accordance with the provisions of Section 10 hereof or, if such repair or maintenance has already been made by the Lessee, to reimburse the Lessee for any payments made by it in respect of the repair and maintenance occasioned by such breach, and, **second**, to compensate the Lessee for all other losses or expenses incurred by it as a result of such breach of warranty or indemnity, and the balance, if any, shall be paid over to or retained by the Lessor.

SECTION 8. Liens.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Equipment or any Item thereof, the Lessor's title thereto or any interest of the Lessor therein (and the Lessee will promptly, but in any event within 30 days after any such creation or incurrence, at its own expense, take such action as may be necessary duly to discharge any such Lien), except (a) the respective rights of the Lessor and the Lessee as herein provided, (b) Lessor's Liens, (c) Liens for taxes either not yet due or being contested by the Lessee in good faith with due diligence and by appropriate proceedings, if counsel for the Lessor shall have determined that the nonpayment of any such tax or the contest of any such payment in such proceedings does not, in the opinion of such counsel, adversely affect the title, property or rights of the Lessor, and (d) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Lessee and not delinquent more than 30 days.

If any Lien shall be asserted or filed against any Item of Equipment or any Rent or any order (whether or not valid) of any court shall be entered with respect to any such amount by virtue of any claim of any kind, in either case so as to interfere with the due payment of such amount to the Lessor or the Indenture Trustee or the due application of such amount by the Lessor pursuant to any provision of the Trust Agreement or by the Indenture Trustee pursuant to the Indenture, as the case may be, then upon receipt of notice of such claim from the Lessor or the Indenture Trustee, the Lessee will promptly take such action (including but not limited to the payment of money) as may be necessary to prevent or to nullify the cause or

result of such interference, such obligation or such refusal, as the case may be, or the Lessee will pay directly to the Lessor or the Indenture Trustee a sum equal to the amount of any diminution in any amount payable by the Lessee under or pursuant to this Lease or the Indenture on account of any such order resulting from such tax or claim.

The Lessee hereby agrees and confirms that (i) this Lease shall be subordinate in all respects to the security interest created by the Indenture and (ii) it will exercise all of its rights hereunder consistently with the terms of the Indenture and the rights of the holders of Notes thereunder.

SECTION 9. Taxes.

The Lessee agrees to pay and to indemnify the Lessor for, and hold the Lessor harmless from and against, all license, recording and registration fees, income, franchise, gross receipts, sales, use, excise, personal property (tangible or intangible), ad valorem, value added, leasing, leasing use, stamp, fuel, excess profits, occupational, interest equalization or other taxes, levies, imposts, duties, charges, or withholdings of any nature, together with any penalties, fines or interest thereon (**Impositions**), arising out of the transactions contemplated by this Lease or the Participation Agreement or any other documents contemplated hereby or thereby and imposed against the Lessor, the Lessee or the Equipment or any Item thereof by any Federal, state, local government or other taxing authority in the United States or by any foreign government or any taxing authority or governmental subdivision of a foreign country, upon or with respect to the Equipment or any part thereof or upon the construction sale, purchase, ownership, delivery, leasing, subleasing, mortgaging, possession, use, operation, return, transfer or other disposition, documentation, acceptance, storage, repair or maintenance thereof, or upon the rentals, indemnity payments, receipts or earnings arising therefrom, or upon or with respect to this Lease, the Trust Agreement, the Participation Agreement or the Purchase Agreements or the issuance, endorsement, requisition or subsequent transfer thereof, or otherwise or with respect to the transactions contemplated thereby, excluding Impositions on, based on, or measured by, the net income of the Lessor or the Beneficiary imposed by (A) Subtitle A of the Code, (B) any state or local government or taxing authority in the jurisdiction in which such person has its principal office, and (C) any foreign government or any taxing authority or governmental subdivision of a foreign country, to the extent allowed as a credit against income taxes imposed by the United States of America for the current or any prior period taking into account any applicable limitation on the aggregate amount of such credit and after assuming that all Impositions of such person for the same or prior periods which qualify for such credit are first allowed (but this clause shall not

alter the obligation of the Lessee initially to pay Rent free of withholding).

Notwithstanding the foregoing exclusions, there shall not be excluded any Impositions imposed by any jurisdictions, on, based on, or measured by, net income resulting directly or indirectly (whether by inclusion of an item in gross income, disallowance of a credit against tax, disallowance of a deduction for depreciation or cost recovery or otherwise) from (x) the Lessee's receipt of or right to receive any refund or credit pursuant to the Purchase Agreements or (y) any payment by the Vendor in satisfaction of a claim against the Vendor with respect to the Equipment or any part thereof under any warranty or indemnity provision of the Purchase Agreements or for failure to meet any specifications attached thereto, unless, and only to the extent that, any Impositions which are not imposed by way of withholding are being contested by the Lessee in good faith (and for the payment of which adequate reserves have been provided) by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any Item of Equipment or any interest therein.

The Lessee further agrees that, with respect to any payment or indemnity hereunder, such payment or indemnity shall include any amount necessary to hold the recipient of the payment or indemnity harmless on an after-tax basis from all Impositions (without regard to the exclusions set forth above) required to be paid by such recipient (which in the case of the Beneficiary shall include any member of an affiliated group, within the meaning of Section 1504 of the Code, of which the Beneficiary is a member) with respect to such payment or indemnity under the laws of any Federal, state or local government in the United States, or under the laws of any foreign government or any taxing authority or governmental subdivision of any foreign government. Payments due from the Lessee to the Lessor pursuant to this Section 9 shall be made directly to the Lessor in immediately available funds.

If any proceeding (including the written claim or written threat of a proceeding) is commenced against the Lessor for any Imposition, the Lessor shall promptly notify the Lessee in writing, provided, however, that the failure to give prompt notice shall not impair the Lessor's right to indemnification under this Article 9. If reasonably requested by the Lessee in writing as promptly as reasonably practical after receipt of such notice, the Lessor shall upon receipt of (i) an opinion of independent counsel, which opinion and counsel shall be in all respects reasonably satisfactory to the Lessor, to the effect that (a) a meritorious defense exists to the asserted liability for such Impositions that are the subject of such proceeding or threat thereof, and (b) the contest of such asserted liability will not result in a risk of sale, forfeiture or other loss of, or the imposition of a lien upon, any Item of Equipment or any

part thereof, and (ii) indemnity satisfactory to it and at the expense of the Lessee (including, without limitation, all costs, expenses, losses, legal and accountants' fees and disbursements, penalties and interest) either (A) in good faith contest (after consultation with Lessee) in the name of the Lessee or the Lessor, the validity, applicability or amount of such Impositions by (a) resisting payment thereof if the Lessor in its full discretion shall determine such course of action to be appropriate, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (B) if such contest may be undertaken by the Lessee in its own name or (if such contest may not be undertaken by the Lessee in its own name) on behalf of the Lessor, permit the Lessee to contest the validity, applicability or amount of such Impositions, provided, however, that the Lessee shall be permitted to contest such Impositions only so long as such contest does not involve matters related to the transactions contemplated by this Lease or the Participation Agreement and only if, prior to commencing any such contest, the Lessee shall have satisfied the conditions listed above and shall have consulted with the Lessor regarding the contest strategy that it intends to follow, and provided, further, that no such contest shall be permitted if it will result in any danger of the sale, forfeiture or loss of any item of Equipment or any part thereof or interest therein, or in the creation of a lien thereon which is not fully bonded and that sole control over the conduct of a contest undertaken by or in the name of the Lessor will reside in the Lessor. If the Lessor shall obtain a refund of all or any part of such Impositions paid by the Lessee the Lessor shall pay the Lessee the amount of such refund; provided that such amount shall not be payable before such time as the Lessee shall have made all payments or indemnities then due under this Section 9 or if a Default or an Event of Default shall have occurred and be continuing. If in addition to such refund the Lessor shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly attributable to Impositions paid by the Lessee prior to the receipt of such refund (after deducting from the Amount of such interest all taxes imposed with respect to the receipt or accrual thereof). The Lessee shall not be deemed to be in default under any of the above indemnification provisions so long as the Lessee (if the Lessee is the party undertaking such contest) shall diligently prosecute such contest. Notwithstanding the foregoing, the Lessor may, at any time, refuse to engage in any such contest or terminate any such contest previously commenced, but if it shall do so, it shall have no right to indemnification for such year for the taxes that were (or would have been) the subject of such contest.

In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 9 or arising out of this Section 9, the Lessee either will make such

report or return in such manner as will show the ownership of the Equipment in the Lessor or the Beneficiary, and send a copy of such report or return to the appropriate party identified pursuant to Section 22 hereof as a "Lessor" for purposes of this Section 9 and the Beneficiary or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor.

The representations, warranties, indemnities and agreements of such Lessee provided for in this Section 9, the Lessee's obligations under any and all thereof and the obligations of the Lessor hereunder shall survive the expiration or other termination of this Lease or the Participation Agreement.

SECTION 10. Maintenance and Operation; Compliance and Use; Replacement Parts; Improvements; Equipment Marking; Personal Equipment.

(a) **Maintenance and Operation.** The Lessee shall operate the Equipment only in the manner for which it was designed and intended and shall maintain, inspect, service, repair and overhaul the Equipment in accordance with the Vendor's recommended procedures so as to keep the Equipment in as good operating condition and in accordance with the interchange rules of the Association of American Railroads as when delivered to the Lessee hereunder, ordinary wear and tear excepted. Throughout the term of this Lease, the possession, operation and maintenance of the Equipment shall be at the sole risk and expense of the Lessee.

(b) **Compliance and Use.** The Lessee agrees that the maintenance, use and operation of the Equipment will not be in violation of the interchange rules of the Association of American Railroads, any statutes, laws, ordinances, regulations and mandatory standards or directives of any governmental agency (including, without limitation, the Department of Transportation or the Interstate Commerce Commission) applicable to the maintenance, use or operation thereof, which violation would have a material adverse effect on the ownership of the Equipment by the Lessor or its use and operation by the Lessee, and, subject to the provisions of Sections 12(b) and 15 hereof, will at all times (1) be used solely in the conduct of its business and (2) be and remain in the possession and control of the Lessee and (3) be located within the continental United States.

(c) **Replacement Parts.** Except as otherwise provided in the succeeding paragraph (d) of this Section, the Lessee, at its own cost and expense, will promptly replace all Parts which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever (such substituted parts hereinafter called

Replacement Parts). The Lessee shall notify the Lessor of any Replacement Part having a per item cost of \$10,000 or more. In addition, in the ordinary course of maintenance, service, repair, overhaul or testing, the Lessee may, at its own cost and expense, remove any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, **provided, however,** that the Lessee shall, at its own cost and expense, replace such Parts as promptly as practicable. All Replacement Parts shall be free and clear of all Liens and shall be in as good operating condition as, and shall have a value and utility at least equal to, the Parts replaced assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof. All Parts at any time removed from any Item of Equipment shall remain the property of the Lessor, no matter where located, until such time as such Parts shall be replaced by Parts which have been incorporated or installed in or attached to such Item of Equipment and which meet the requirements for Replacement Parts specified above. Immediately upon any Replacement Part becoming incorporated or installed in or attached to an Item of Equipment as above provided, without further act, (i) title to the removed Part shall thereupon vest in the Lessee, free and clear of all rights of the Lessor, and shall no longer be deemed a Part hereunder, (ii) title to such Replacement Part shall thereupon vest in the Lessor, and (iii) such Replacement Part shall become subject to this Lease and be deemed part of such Item of Equipment for all purposes hereof to the same extent as the Parts originally incorporated or installed in or attached to such Item of Equipment. The Lessee agrees to execute and file such documents as may be reasonably required to create, perfect and maintain the Indenture Trustee's security interest in any such Replacement Part and the Lessor's ownership in any such Replacement Part.

(d) **Improvements.** (i) **General.** The Lessee may either (1) without the prior written consent of the Lessor or the Indenture Trustee, but solely at Lessee's expense, repair an Item of Equipment by the installation of a Replacement Part, or (2) with the prior written consent of the Lessor and the Indenture Trustee, which consent shall not be unreasonably withheld, affix, install or make any Nonseverable Improvement or Severable Improvement as the Lessee may deem desirable in the proper conduct of its business, **provided, however,** no such Improvement diminishes the value, utility and condition of such Item of Equipment below the value, utility and condition thereof immediately prior to the making, affixing or installing of such Improvement, assuming such Item of Equipment was then of the value or utility and in the condition required to be maintained by the terms of this Lease.

(ii) **Nonseverable Improvement.** Title to any Nonseverable Improvement shall, upon installation or affixation, vest in the Lessor and thereupon such Nonseverable Improvement shall become a

part of the Equipment for all purposes hereof and become subject to this Lease (whether or not the Lessor elects to finance such Nonseverable Improvement). If any such Nonseverable Improvement shall have a cost (including installation) in excess of \$10,000, the Lessee at its sole cost and expense shall promptly furnish the Lessor with a full warranty bill of sale, in form and substance satisfactory to the Lessor, conveying title to such Improvement to the Lessor. The Lessee shall give the Lessor at least 90 days' prior written notice before any Nonseverable Improvement is made and the Lessor shall have the option (but not the obligation) of financing the cost of such Nonseverable Improvement on terms acceptable to the Lessee (in which case the Basic Lease Rate Factor, the Casualty Values and the Termination Values will be increased in such manner as shall be agreed upon by the Lessor and the Lessee). Within 45 days after the giving of such notice, the Lessor shall notify the Lessee in writing whether or not it elects to finance the cost of such Nonseverable Improvement. If the Lessor elects not to finance such Nonseverable Improvement, the Lessee will either obtain the required financing for the Lessor on terms that will not affect the treatment of this Lease as a true lease for Federal income tax purposes (in which case the Basic Lease Rate Factor, the Casualty Values and the Termination Values shall be increased in accordance with the method of adjustment set forth in Section 3(e) hereof to the extent necessary to pay any additional borrowings by the Lessor and to preserve the Net Economic Return of the Beneficiary) or the Lessee will itself finance such Nonseverable Improvement. In the latter case, the Lessor agrees that the Lessee may claim the deduction for accelerated cost recovery and the investment tax credit available under the Internal Revenue Code of 1954, as amended, in respect of such Nonseverable Improvement and that the Lessor will not take any action inconsistent with such claim. Notwithstanding any provision herein to the contrary, the financing of any Nonseverable Improvement pursuant hereto shall be subject and subordinate to the rights of the Indenture Trustee, as secured party and lienholder.

(iii) **Severable Improvement.** Title to any Severable Improvement shall remain in, and be acquired at the expense of, the Lessee. So long as no Default shall have occurred and be continuing hereunder, the Lessee may remove any Severable Improvement at any time prior to the expiration or termination of this Lease. The Lessor shall have the option to purchase for cash any Severable Improvement owned by the Lessee at the expiration or termination of this Lease. If the Lessor elects to exercise such option, the Lessor shall, not later than the date of the return of the Item of Equipment pursuant to Section 6 hereof, give the Lessee written notice of its election to purchase such Severable Improvement on a date specified in such notice occurring within 10 days after such return. The purchase price of such Severable Improvement shall be the Fair Market Value as of the date of such purchase. If the Lessor elects to purchase such Severable Improvement, the Lessee will on or prior to

the date of such purchase, upon receipt of the purchase price, furnish or cause to be furnished to the Lessor (x) a bill of sale with respect to such Severable Improvement in form and substance satisfactory to the Lessor and (y) such evidence of title as the Lessor may reasonably request.

(e) **Duty to Number and Mark.** The Lessee will cause each Item of Equipment to be kept numbered with a road number set forth in a Schedule attached hereto, or as otherwise directed by the Lessor, and in the case of any Item of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Item of Equipment. The Lessee will maintain permanently and conspicuously marked upon each side of each Item of Equipment in letters not less than one-half inch in height the following:

"Ownership subject to a Security Agreement between The Connecticut Bank and Trust Company and F.W. Kawam, Trustees, Owner; Southeast Bank, N.A., Indenture Trustee, Secured Party, filed under the Interstate Commerce Act."

with appropriate changes and additions as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under this Lease. The Lessee will not place any Item of Equipment in operation until the required legend shall have been so marked.

The Lessee will not change the road number of any Item of Equipment unless (i) the Lessor shall have been given 180 days prior written notice from the Lessee of a proposed change, (ii) a statement of new numbers to be substituted therefor shall have been filed, with the Indenture Trustee and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Indenture shall have been filed, recorded and deposited and (iii) the Lessee shall have furnished the Indenture Trustee and the Lessor an opinion of counsel to such effect. Upon receipt by the Lessor of the notice referred to in clause (i) above with respect to any Item of Equipment, the Lessor at its option may direct the Lessee to have such Item of Equipment marked with a road number selected by the Lessor, and the Lessee at its own cost and expense shall forthwith cause the Item to be marked as directed by the Lessor. The Items of Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or any permitted sublessee.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Item of Equipment as a designation that might be interpreted as a claim of ownership.

(f) **Filing.** The Lessee, at its own expense, will cause this Lease and the Indenture to be filed and recorded with (i) the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and (ii) any other state governmental instrumentality necessary in order to protect the interest of the Lessor or the Indenture Trustee. The Lessee will undertake, at its own expense, the filing, registering, deposit and recording required of the Lessor under the Indenture and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Indenture Trustee for the purpose of proper protection, to their satisfaction, of the Indenture Trustee's and the Lessor's respective interests in the Items of Equipment, or for the purpose of carrying out the intention of this Lease and the Indenture.

The Lessee will promptly furnish to the Indenture Trustee and the Lender evidence of all such filing, registering, depositing or recording and an appropriate opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Indenture Trustee and the Lessor. This Lease and the Indenture shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Item of Equipment.

SECTION 11. Inspection.

The Lessor and the Lender shall have the right, but not the duty, to inspect the Equipment. Upon the request of the Lessor or the Lender, the Lessee shall, at any reasonable time, make the Equipment, and the Lessee's records pertaining to the Equipment, available to the requesting party for inspection.

SECTION 12. Loss or Destruction; Requisition of Use.

(a) **Event of Loss.** Upon the occurrence of an Event of Loss with respect to any Item of Equipment, the Lessee shall notify the Lessor thereof on the next Basic Rent Date but in any event within 30 days of the date thereof, and on the Basic Rent Date next following the date of such Event of Loss (unless such Event of Loss occurs within 60 days prior to such Basic Rent Date, in which case, on the second succeeding Basic Rent Date following the date of such Event of Loss) or, if such Event of Loss occurs after the Last Basic Rent Date, within 90 days after such Event of Loss, the Lessee shall purchase such Item of Equipment on an **as is, where is** basis without recourse, representation or warranty, express or implied, from the Lessor at a price equal to the Casualty Value of such Item of Equipment determined as of such Basic Rent Date, together with any

Rent then due. Upon making such payment in respect thereof and all Rent due and owing with respect thereto, the Lessee's obligation to pay further Basic Rent for such Item of Equipment shall cease, but the Lessee's obligation to pay Supplemental Rent, if any, for such Item of Equipment shall remain unchanged.

(b) **Requisition of Use.** In the case of a Requisition of Use with respect to an Item of Equipment which does not constitute an Event of Loss, such Requisition of Use shall not terminate this Lease with respect to such Item of Equipment and each and every obligation of the Lessee with respect thereto shall remain in full force and effect. So long as no Event of Default shall have occurred and be continuing under this Lease, the Lessee shall be entitled to all sums, attributable to the period such Item of Equipment is subject to this Lease, received by reason of any such Requisition of Use referred to in the preceding sentence.

(c) **Risk of Loss; No Release of Obligations.** Except as provided in this Section, the Lessee shall bear the risk of loss and shall not be released from its obligations hereunder in the event of any damage to the Equipment or any part thereof or any Event of Loss relating thereto.

SECTION 13. Insurance.

(a) **Public Liability and Equipment Damage Insurance.** The Lessee shall, at all times during the Interim Lease Term, Basic Lease Term, any Lease Extension Period and any storage period provided for in this Lease, maintain in effect at its own expense public liability insurance and property damage insurance with respect to the Equipment in such amounts and on such terms and conditions as are reasonably satisfactory to the Lessor and the Lender, and in any event (i) with such reasonable deductibles which are not more than deductibles with respect to, and in amounts which are not less than, the public liability and property damage insurance applicable to similar equipment on which the Lessee carries insurance, (ii) of the type and in the amount usually carried by corporations engaged in transportation of coal, similarly situated with the Lessee, which covers risks of the kind customarily insured against by such corporations, and (iii) which is maintained in effect with insurers of recognized responsibility reasonably satisfactory to the Lessor and the Indenture Trustee.

(b) **Insurance Against Loss or Damage to the Equipment.** The Lessee shall, at all times during the Interim Lease Term, Basic Lease Term, any Lease Extension Period and any storage period provided for in this Lease, maintain in effect, at its own expense, with insurers of recognized responsibility reasonably satisfactory to the Lessor and the Indenture Trustee, "all-risks" casualty insurance in such amounts and on such terms and conditions as are reasonably satisfactory to the Lessor and the Lender, which is of the type and

with such reasonable deductibles and in substantially the amount usually carried by corporations engaged in the transportation of coal and similarly situated with the Lessee; **provided** that such insurance shall at all times while the Equipment is subject to this Lease be for an amount which when paid will be not less than the greatest of (i) 105% of the Casualty Value for the Equipment from time to time (determined as of the next preceding Basic Rent Date), (ii) the then full fair market value of the Equipment or (iii) 105% of the principal amount then outstanding on the Notes.

(c) **Lessor and Indenture Trustee as Additional Insureds; Notice.** Any policies of insurance carried in accordance with this Section and any policies taken out in substitution or replacement for any such policies (i) shall be amended to name the Lessor as owner of the Equipment, the Beneficiary and the Indenture Trustee as additional named insureds and loss payees, as their respective interests may appear, (ii) with respect to insurance carried in accordance with the preceding paragraph (b) shall so long as any of the Notes shall be outstanding and unpaid, be made payable to the Indenture Trustee (and after all obligations with respect to the Notes have been fulfilled, to the Lessor) and shall be disbursed by the Indenture Trustee (or the Lessor, as the case may be) to the Lessee or other appropriate Person in payment of the costs actually incurred with respect to repairs made to the Equipment so as to restore it to the operating condition required by Section 10 hereof or shall be disbursed as otherwise required by this Lease, (iii) shall provide that if the insurers cancel such insurance for any reason whatever, or any substantial change is made in the coverage which affects the interests of the Lessor and the Indenture Trustee, or the same is allowed to lapse for nonpayment of premium or such insurance coverage is reduced, such cancellation, change, lapse or reduction shall not be effective as to the Lessor, the Beneficiary or the Indenture Trustee for 30 days after receipt by the Lessor, the Beneficiary or the Indenture Trustee, respectively, of written notice by such insurers of such cancellation, change, lapse or reduction, (iv) shall provide that in respect of the interest of the Lessor, the Beneficiary and the Indenture Trustee in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person (other than of the Lessor, the Beneficiary or the Indenture Trustee, as the case may be) and shall insure the Lessor's, the Beneficiary's and the Indenture Trustee's interests, as they appear, regardless of any breach or violation of any warranties, declarations or conditions contained in such policies by the Lessee or any other Person (other than by the Lessor or the Indenture Trustee, as the case may be) and (v) shall provide that the insurer's right of subrogation against the Lessor, the Indenture Trustee, the Lender and the Beneficiary shall be waived. Each liability policy (i) shall be primary without right of contribution from any other insurance which is carried by the Lessor, the Beneficiary or the Indenture Trustee to the extent that such other insurance provides it with contingent

and/or excess liability insurance with respect to its interest as such in the Equipment and (ii) shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. The Lessee shall arrange for appropriate certification as to the satisfaction of the requirements set forth above in this paragraph to be delivered promptly (and in any case not later than the Document Closing Date) to the Lessor, the Beneficiary and the Indenture Trustee by each insurer with respect thereto.

(d) **Reports, etc.** On or before the Document Closing Date, and annually on or before January 31 of each year commencing January 31, 1983, and each time there is a proposed reduction or material change in the insurance coverage carried on the Equipment, the Lessee shall furnish to the Lessor, the Beneficiary, the Lender and the Indenture Trustee a detailed report signed by independent insurance brokers (who may be the insurance brokers regularly employed by the Lessee) appointed by the Lessee and acceptable to the Lessor and the Lender (which acceptance shall not be unreasonably withheld) describing the insurance policies then carried and maintained on the Equipment (including the names of the underwriters, the types of risk covered by such policies, the amount insured thereunder and the expiration date thereof) and stating that in the opinion of said insurance brokers such insurance is adequate and reasonable for protection of the Lender, the Lessor, the Indenture Trustee and the Beneficiary, is in compliance with the terms of this Section 13 and is comparable with that carried by other responsible operators of similar equipment. At Lessee's expense Lessee will cause such insurance broker to agree to advise the Lender, the Lessor, the Indenture Trustee and the Beneficiary by telegram confirmed by letter of any default in the payment of any premium and of any other act or omission on the part of Lessee of which it has knowledge and which might invalidate or render unenforceable, in whole or in part, any insurance on the Equipment. The Lessee will also advise the Lessor and the Indenture Trustee in writing at least 30 days prior to the expiration or termination date of any insurance carried and maintained pursuant to this Section. In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its sole option provide such insurance and, in such event, the Lessee shall, upon demand, reimburse the Lessor, as Supplemental Rent, for the cost thereof, without waiver of any other rights the Lessor may have.

SECTION 14. Indemnification.

Whether or not any of the transactions contemplated by the Participation Agreement and this Lease are consummated, the Lessee agrees to assume liability for, agrees to waive, to the extent permitted by applicable laws any claims it may have against the Lessor for, and does hereby agree to indemnify, protect, save and

keep harmless the Lessor from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability in tort), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (Claims) which may be imposed on, incurred by or asserted against the Lessor, whether or not the Lessor shall also be indemnified as to any such Claim by any other Person, in any way relating to or arising out of this Lease the Participation Agreement, the Trust Agreement, the Indenture or any other document contemplated hereby, or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of the Equipment or any part thereof or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement); **provided, however,** that the Lessee shall not be required to indemnify the Lessor for (a) any Claim in respect of the Equipment arising from acts or events which occur after possession of the Equipment has been redelivered to the Lessor in accordance with Section 6 hereof, or (b) any Claim resulting from acts which would constitute the willful misconduct or gross negligence of the Lessor. If any Claim is made against the Lessee or the Lessor, the party receiving notice of such Claim shall promptly notify the other; **provided, however,** that failure of the Lessor to so promptly notify the Lessee shall not impair the right of the Lessor to indemnification under this Section 14 except where failure to give prompt notice shall preclude the Lessee from any ability to contest such Claim. **THE LESSEE AGREES THAT THE LESSOR SHALL NOT BE LIABLE TO THE LESSEE FOR ANY CLAIM CAUSED DIRECTLY OR INDIRECTLY BY THE INADEQUACY OF THE EQUIPMENT OR ANY PART THEREOF FOR ANY PURPOSE OR ANY DEFICIENCY OR DEFECT THEREIN OR THE USE OR MAINTENANCE THEREOF OR ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO OR ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE ANY THEREOF OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR ANY LOSS OF BUSINESS, ALL OF WHICH SHALL BE THE RISK AND RESPONSIBILITY OF THE LESSEE.**

SECTION 15. Sublease; Possession.

The Lessee shall have the right, but only with the prior written consent of the Lessor to sublet or otherwise relinquish possession of any Item of Equipment or any part thereof; **provided, however,** that (i) no sublease shall be permitted hereunder unless the Equipment would be, and continues to be, in the possession of the sublessee, "section 38 property", within the meaning of section 46 of the Code, used within the continental United States and the rights of the sublessee thereunder are expressly subject and subordinate to the

rights of the Lessor and the Indenture Trustee; (ii) no sublease or other relinquishment of the possession of any Item of Equipment shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder and, (iii) no sublease shall be permitted which would cause the Lessor not to realize the Tax Assumptions set forth in Section 11(a)(10) and 11(a)(12) of the Participation Agreement and (iv) no sublease shall be permitted the term of which would extend beyond the Expiration Date. The Lessee shall not have the right to assign this Lease except as permitted by Sections 9(c) and (d) of the Participation Agreement.

SECTION 16. Voluntary Termination for Obsolescence.

(a) **Right to Terminate, Procedures.** In the event that the Lessee shall in its reasonable judgement determine that the Equipment shall have become economically obsolete or surplus to the Lessee's requirements (pursuant to a determination of the Lessee's Board of Trustees as certified in writing to the Lessor by the President or chief operating officer of the Lessee), the Lessee shall have the right, at any time on or after the First Termination Date, on at least one year's prior written notice to the Lessor, to terminate this Lease with respect to all but not less than all Items of Equipment, such termination to be effective on the Basic Rent Date next following the expiration of the one year notice period but in no event prior to the First Termination Date (the **Termination Date**); **provided, however,** that no Default or Event of Default shall have occurred and be continuing hereunder and **provided, further,** that (i) on the Termination Date the Items of Equipment shall be in the same condition as if being redelivered pursuant to Section 6 and free and clear of all Liens except the Indenture and this Lease and (ii) the Lessee in making such election to terminate shall not unreasonably discriminate against the Equipment as compared with other similar railroad cars owned or leased by the Lessee. During the period from the giving of such notice until the Termination Date, the Lessor may, and the Lessee, as agent for the Lessor, shall, use their best efforts to obtain bids for the purchase of the Equipment. The Lessee shall certify to the Lessor in writing the amount of each bid received by the Lessee and the name and address of the party submitting such bid. The Lessee may utilize agents at Lessee's expense for purposes of fulfilling its obligations set forth in this Section. On the Termination Date, the Lessor shall sell the Equipment, on an **as is, where is** basis without recourse or warranty, for cash to whomsoever shall have submitted the highest bid prior to such date (other than the Lessee or any affiliate of the Lessee) and shall transfer to such purchaser all of the Lessor's right, title and interest in and to the Equipment, and thereupon the Lessee shall deliver possession of the Equipment to the Lessor in accordance with the terms of Section 6 hereof. The Lessor shall certify in writing to the Lessee (i) the amount of such total sale price, (ii) the expenses incurred

by the Lessor in connection with such sale, and (iii) that such total sale price represents the highest bid received by the Lessor for the purchase of the Equipment. The total sale price realized at such sale shall be retained by the Lessor, and, in addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent payment payable on such date and the amount, if any, by which (A) the Termination Value, computed as of the Termination Date, exceeds (B) the proceeds of such sale less all expenses incurred by the Lessor in selling the Equipment. In the event no such sale takes place, the Lessee shall pay to the Lessor the Termination Value, computed as of the Termination Date, plus any reasonable expenses incurred by the Lessor in connection therewith and the Basic Rent payment then due. Upon payment of all amounts required to be paid by the Lessee pursuant to this paragraph, the obligation of the Lessee for all Basic Rent accruing hereunder due and payable after, but not on or before, the Termination Date shall cease. The foregoing provisions of this Section 16(a) to the contrary notwithstanding, the Lessor may, by notice in writing given to the Lessee on or prior to the Termination Date, elect to retain the Equipment for its own use if the Lessor shall have delivered to the Lessee a release of all obligations of the Lessee to pay Basic Rent with respect to the Equipment on any and all Basic Rent Dates occurring after (but not on or before) the Termination Date and of the obligation of the Lessee to pay Termination Value in respect of the Equipment.

(b) **Lessee's Election to Rescind.** Notwithstanding the foregoing, **provided** that no Default or Event of Default shall have occurred and be continuing hereunder, upon written notification given to the Lessor not less than 90 days prior to the Termination Date, the Lessee may elect to rescind the Lessee's notice of termination, in which case this Lease shall not terminate as set forth in this Section, but shall continue in full force and effect as though no such notice of termination had been given by the Lessee. The Lessee shall have the right to rescind a notice of termination pursuant to this paragraph only one time.

The Lessor shall be under no duty to solicit bids (but shall have the right to do so), to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this Section 16 other than to transfer or to cause to be transferred to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided all the Lessor's right, title and interest in and to the Equipment. Any sale pursuant to this Section 16 shall be free and clear of all the Lessee's rights to the Equipment and of any encumbrances as to which the Lessor has indemnified the Lessee but otherwise shall be made without any representation, recourse or warranty whatsoever on the part of the Lessor except that the Lessor shall warrant to the purchaser that the Equipment is free and clear of all Liens as to which the Lessor has indemnified the Lessee.

SECTION 17. Lease Extensions.

(a) **Lease Extension Periods.** Provided that this Lease has not been terminated and provided that no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall have the option to extend this Lease with respect to all (but not less than all) of the Items of Equipment at the Expiration Date and, in the event this Lease shall have been extended, at the expiration date of any such extension and at the expiration date of successive extensions thereafter (any such expiration date being referred to in this Section as the **Extension Date**) for a period (a **Lease Extension Period**) of (i) one or two years in duration, in the case of the first such Lease Extension Period, at a rental equal to 50% of the average of the payments of Basic Rent due hereunder on each Basic Rent Date from and including the First Basic Rent Date to and including the Last Basic Rent Date, payable as provided in clause (2) of paragraph (b) of Section 3 hereof, and (ii) after the first Lease Extension Period, for an unlimited number of years, on a year to year basis or for longer periods as the Lessee shall designate, at a rental equal to the Fair Market Rental Value of such Items of Equipment, payable as provided in clause (2) of paragraph (b) of Section 3 hereof; **provided, however,** that the duration of the first Lease Extension Period, when added to the Basic Lease Term, shall not exceed 80% of the useful economic life of the Equipment, and Fair Market Value at the end of such first Lease Extension Period shall be at least 20% of Lessor's Cost, as such economic useful life and Fair Market Value shall be estimated in the appraisal delivered pursuant to clause (12) of paragraph (a) of Section 10 of the Participation Agreement.

(b) **Lease Extension Procedures.** Not less than one year days prior to each Extension Date the Lessee may, by expressly irrevocable written notice to the Lessor, exercise the Lessee's lease extension option described above, which notice if for any Lease Extension Period after the first Lease Extension Period, shall set forth the Lessee's estimate of the Fair Market Rental Value of the Equipment as of the Extension Date. If, on or before a date 180 days prior to the Extension Date (other than the Expiration Date), the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of the Equipment, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal.

SECTION 18. Purchase Option.

(a) **Right to Purchase.** Provided that this Lease has not been terminated and provided that no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall have the option to purchase all, but not less than all, of the Items of Equipment on the Expiration Date and, in the event this Lease

shall have been extended pursuant to the provisions of Section 17 hereof, on the expiration date of any Lease Extension Period (any such expiration date being referred to in this Section as the **Purchase Date**) for a purchase price equal to the Fair Market Value thereof, determined as of the Purchase Date.

(b) **Notice.** Not less than one year prior to the Purchase Date, the Lessee may, by expressly irrevocable written notice to the Lessor, exercise the Lessee's purchase option described above, setting forth, in such written notification, the Lessee's estimate the Fair Market Value as of the Purchase Date of the Equipment. If, on or before a date 180 days prior to the Purchase Date, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of such Items, such Fair Market Value shall be determined in accordance with the procedure for Appraisal.

(c) **Sale of Equipment.** On the Purchase Date, if no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall purchase from the Lessor and the Lessor shall sell to the Lessee, without recourse or warranty, the Equipment for a cash consideration equal to the Fair Market Value thereof. Upon payment of such purchase price, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that each such Item of Equipment is free and clear of all Liens by or in favor of any Person claiming by, through or under the Lessor) for such Items, and such other documents as may be required to release such Items from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense. The fees of all brokers and any other costs or expenses and transfer or other taxes (other than federal, state or local income taxes) incurred in connection with a purchase of the Equipment by the Lessee pursuant to this Section 18 shall be borne by the Lessee.

SECTION 19. Events of Default.

The term **Event of Default**, wherever used herein, shall mean any of the following events under this Lease (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Lessee shall fail to make any payment of Rent within 5 days after the same shall become due; or

(b) The Lessee shall fail to maintain in effect at all times insurance with respect to any Item of Equipment as required by Section 13 hereof or shall fail to pay any premium when due in respect thereof; or

(c) The Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Lease, the Participation Agreement, the Equipment Contract or the Assignment of Equipment Contract, and such failure shall continue for 30 days after notice thereof given by the Lessor to the Lessee or, in the case of the Lessee's failure to pay any indemnity as provided herein or in the Participation Agreement such failure shall continue unremedied for a period of 15 days after written notice thereof by or on behalf of the Lessor; or

(d) Any representation or warranty made by the Lessee in this Lease, the Participation Agreement, the Equipment Contract Assignment or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith or pursuant hereto or thereto (other than any representation or warranty made by the Lessee in paragraph (b) of Section 11 of the Participation Agreement) shall prove to have been incorrect in any material respect when any such representation or warranty was made or given; or

(e) Other than with respect to indebtedness secured by or loan agreements in respect of indebtedness secured by the REA Mortgage, (i) the Lessee shall fail to pay, on the due date for payment thereof (whether at maturity, upon acceleration or otherwise) after the expiration of any grace period, any obligation with respect to any borrowed monies or advances for borrowed monies in the unpaid principal amount of \$100,000 or more (including any obligation with respect to any borrowed monies or advances directly or indirectly guaranteed by the Lessee or in respect of which the Lessee is contingently liable); or (ii) the Lessee shall fail to observe or perform any term, covenant or agreement contained in any indenture, contract, agreement or other instrument by which the Lessee is bound evidencing or securing borrowed monies or advances, or pursuant to which the Lessee has given its guarantee, in each case in the unpaid principal amount of \$100,000 or more, if the effect of such failure referred to in this clause (ii) is to accelerate, the maturity thereof or of any such obligations or (iii) any material obligation of the Lessee for the payment of rent or hire under any lease for real or personal property shall not be paid when due, and the period of grace, if any, shall have elapsed or any such obligation shall be accelerated ; or

(f) The Lessee shall fail to pay, on the due date for payment thereof (whether at maturity, upon acceleration or otherwise) after the expiration of any grace period, any obligation with respect to borrowed monies secured under the REA Mortgage or any other event of default shall have occurred under the REA Mortgage and, in the

case of such other event, the mortgagee under the REA Mortgage shall have declared the Lessee to be in default thereunder; or

(g) The Lessee shall (1) be adjudicated a bankrupt or become subject to an order for relief under any federal bankruptcy law, (2) not pay, or admit in writing its inability to pay, its debts generally as they become due, (3) make an assignment for the benefit of creditors, (4) apply for, seek, consent to, or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (5) institute any proceedings seeking an order for relief or to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (6) take any action to authorize or effect any of the foregoing actions, or (7) fail to contest in good faith any appointment or proceeding described in Section 19(i) hereof; or

(h) Without the application, approval or consent of the Lessee, a receiver, trustee, examiner, liquidator or similar official shall be appointed for the Lessee or any part of its property, or a proceeding described in Section 19(g) shall be instituted against the Lessee and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty consecutive days; or

(i) Final judgment for the payment of money shall be rendered by a court of record against the Lessee and the Lessee shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereon within 90 days from the entry thereof, and within said period of 90 days, or such longer period during which execution on such judgment shall have been stayed, appeal therefrom and cause the execution thereon to be stayed during such appeal, and except for any such final judgment which the Lessee is contesting in good faith by appropriate proceedings and for which the Lessee has established adequate reserves and/or possesses adequate insurance coverage.

SECTION 20. Remedies.

(a) Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default by written notice to such effect given to the Lessee, and at any time thereafter, the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall lawfully elect:

(i) Proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;

(ii) By notice in writing terminate this Lease, whereupon all rights of the Lessee to the use of the Equipment or any part thereof shall absolutely cease and terminate but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessee, if so requested by the Lessor, shall at its expense promptly return the Equipment to the possession of the Lessor at such place as the Lessor shall designate and in the condition required upon the return thereof pursuant to and in accordance with the terms hereof, or the Lessor, at its option, may, but shall be under no obligation to, to the extent permitted by applicable law, enter upon the premises where the Equipment is located and take immediate possession of and remove the same, irrespective of whether the Lessee, any sublessee or any other person may be in possession of any Item of Equipment, all without prior demand, by summary proceedings or otherwise. The Lessee shall, without further demand, forthwith pay to the Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default, plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value, computed as of the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default. Following the return of the Equipment to the Lessor pursuant to this paragraph the Lessor shall, as soon as commercially practicable, proceed to either sell or re-let the Equipment in a commercially reasonable manner. If the Lessor re-lets the Equipment, the present value of the rental which shall be payable to the Lessor in connection with such re-letting for the period from the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default to the end of the Basic Lease Term or the Lease Extension Period, as the case may be, computed on the basis of a 8% per annum discount (compounded for the periodicity of the payment of rents under such re-letting) shall be referred to hereinafter as the **Proceeds of Re-letting**. The proceeds of such sale or the Proceeds of Re-letting, as the case may be, shall be applied by the Lessor (A) first, to pay all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor as a result of the default and the exercise of its remedies with respect thereto, (B) **second**, to pay to the Lessor an amount equal to any unpaid Rent due and payable and the Casualty Value, to the extent

not previously paid, and (C) **third**, to reimburse the Lessee for the Casualty Value to the extent previously paid by the Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by the Lessor. To the extent that all Basic Rent then due and payable with respect to the Equipment and the Casualty Value in respect of the Equipment have not been previously paid, the Lessee shall forthwith pay to the Lessor the sum of (1) the amount by which (X) the sum of (a) all Basic Rent then due and payable with respect to the Equipment, (b) the Casualty Value or portion thereof not theretofore paid, and (c) the amount payable under clause (A) of the preceding sentence, exceeds (Y) the sale price or the Proceeds of Re-letting, as the case may be, of the Equipment, and (2) interest at the Overdue Rate on that portion of Basic Rent and Casualty Value required to discharge amounts payable under the Notes and the Indenture and (3) interest at the Late Payment Rate on the remaining portion of Basic Rent and Casualty Value, the interest under (2) and (3), above to be computed from the date or dates such Basic Rent or the Casualty Value is payable hereunder until such Basic Rent or Casualty Value is paid by the Lessee.

(b) The Lessee shall be liable for all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto and whether or not suit is instituted.

(c) No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein. To the extent permitted by applicable law, the Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use any Item of Equipment in mitigation of the Lessor's damages except to the extent expressly set forth in this Section 20.

SECTION 21. Notices.

All communications, consents and notices provided for herein shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention: Corporate Trust Department (with copies to the Beneficiary, at its address as specified in the Participation Agreement, and to the Indenture Trustee), (b) if to the Lessee, at P.O. Box 272000, Tampa, Florida 33688, Attention: Manager of Financial Services, and (c) if to the Indenture Trustee, at 100 South Biscayne Blvd., Miami, Florida 33131, Attention: Corporate Trust Department; or at such other address as any of the foregoing Persons may from time to time designate by notice duly given in accordance with the provisions of this Section to such other Persons.

SECTION 22. Successors, Assigns and Indemnified Parties.

This Lease, including all agreements, covenants, representations and warranties, shall be binding upon and inure to the benefit of, and may be enforced by, (1) the Lessor and its successors, assigns and agents, and, where the context so requires, (i) the Beneficiary, (ii) the Indenture Trustee, as assignee and secured party, and (iii) the successors, assigns and agents, of the Beneficiary and the Indenture Trustee, and (2) the Lessee and its successors and, to the extent permitted hereby, assigns. With respect to the provisions of Sections 7, 9 and 14 hereof, the Beneficiary, the Lessor, in both its fiduciary and individual capacities, the Trust Estate (as such term is defined in the Trust Agreement), the Indenture Trustee, in both its fiduciary and individual capacities and as assignee and secured party, the Lender and any subsequent holder of a Note and the successors, assigns and agents of the foregoing shall each be indemnified thereunder as though specifically named therein as "Lessor" and, with respect to clause (b) of the proviso to Section 14 hereof, the willful misconduct or gross negligence of the Lessor or any one such Person shall not affect the rights of any other person indemnified thereunder.

SECTION 23. Amendments and Miscellaneous.

(a) The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; **provided, however,** that, so long as any of the Notes shall be outstanding and unpaid, no such waiver, alteration, modification, amendment or supplement shall make any change, and no termination shall be made, without the consent of the Indenture Trustee; and

provided, further, however, that no such waiver, alteration, modification, amendment or supplement shall be or become effective until approved by the Rural Electrification Administration.

(b) All agreements, indemnities, representations and warranties contained in this Lease, the Participation Agreement or any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Lease and the expiration or other termination of this Lease.

(c) Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) This Lease and the Participation Agreement represent the entire agreement of the parties hereto with respect to the subject matter hereof and supersede any and all prior understandings. This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Equipment, except as lessee only.

(e) This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts. The single executed original of this Lease marked "Original" shall be the "Original" and all other counterparts hereof shall be duplicates and be marked "Duplicate". To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the "Original".

(f) This Lease has been negotiated and delivered in the State of New York and shall be governed by, and construed in accordance with, the laws of the State of New York.

(g) The division of this Lease into sections, the provision of a table of contents and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Lease.

(h) Although this Lease is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto, and this Lease shall be effective on the later of (i) the latest of such dates or (ii) the date on which it is approved by the Rural Electrification Administration.

(i) the latest of such dates or (ii) the date on which it is approved by the Rural Electrification Administration.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized as of the date set forth below.

THE CONNECTICUT BANK AND TRUST COMPANY
and F. W. KAWAM, not in their individual capacities, but solely as trustees under a Trust Agreement dated as of November 1, 1982,
as Lessor

By THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity, but solely as Corporate Trustee,
as Corporate Trustee

By 

Title: CLARK M. WHITCOMB, VICE PRESIDENT

CLARK M. WHITCOMB

 Attorney in Fact

F. W. KAWAM, not in his individual capacity, but solely as Individual Trustee,
as Individual Trustee

Date: 11/18/82

SEMINOLE ELECTRIC COOPERATIVE, INC.,
as Lessee

By _____

Title: President

Date: _____

State of Connecticut)
) ss:
County of Hartford)

On this 18th day of November, 1982, before me personally appeared Clark M. Whitcomb, to me known to be the person whose name is subscribed as attorney-in-fact for F. W. Kawam and he acknowledged that he executed the same as the act of his principal for the purposes therein contained.

[SEAL] CAROL LEE SHATTUCK
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1985

Carol Lee Shattuck
Notary Public

My commission expires _____.

State of Connecticut)
) ss:
County of Hartford)

On this 18th day of ^{November} March, 1982, before me personally appeared Clark M. Whitcomb, to me personally known, who being by me duly sworn, says that he is a Vice President of The Connecticut Bank and Trust Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL] CAROL LEE SHATTUCK
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1985

Carol Lee Shattuck
Notary Public

My commission expires _____.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized as of the date set forth below.

THE CONNECTICUT BANK AND TRUST COMPANY
and **F. W. KAWAM**, not in their individual capacities, but solely as trustees under a Trust Agreement dated as of November 1, 1982,
as Lessor

By **THE CONNECTICUT BANK AND TRUST COMPANY**, not in its individual capacity, but solely as Corporate Trustee,
as Corporate Trustee

By _____
Title: _____

F. W. KAWAM, not in his individual capacity, but solely as Individual Trustee,
as Individual Trustee

Date: _____

SEMINOLE ELECTRIC COOPERATIVE, INC.,
as Lessee

By P. W. A. Helfer
Title: President

Date: Nov. 19 - 1982

Acknowledgment

State of Florida)

County of Volusia) ss:

On this 19th day of November, 1982, before me personally appeared P.W. Phelps to me personally known, who being by me duly sworn, says that he is the President of Seminole Electric Cooperative, Inc., that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public, State of Florida

My Commission Expires Aug. 23, 1986

Backed With Troy Coin Insurance, Inc.

Carly H. Lowe
Notary Public

My commission expires

EXHIBIT A
to Lease

EXHIBIT A
to Lease

DESCRIPTION OF EQUIPMENT

The Equipment shall consist of the following items:

<u>Quantity</u>	<u>Description</u>	<u>Estimated Lessor's Cost Per Item</u>
196	100-ton nominal capacity gondola cars with single rotary dump features manufactured by Ortner Freight Car Company having road numbers SEMX 82000 through SEMX 82047, SEMX 82048 through SEMX 82097, SEMX 83100 through SEMX 83197	\$39,621
4	100-ton nominal capacity gondola cars with double rotary dump features manufactured by Ortner Freight Car Company Ortner Freight Car Company having road numbers SEMX 82900, SEMX 82901, SEMX 83902 and SEMX 83903.	\$40,371

Estimated Lessor's Cost - \$7,927,200

**EXHIBIT B
to Lease**

CERTIFICATE OF ACCEPTANCE

under

EQUIPMENT LEASE dated as of November 1, 1982 (the Lease) between **THE CONNECTICUT BANK AND TRUST COMPANY** and **F. W. KAWAM**, as lessor, not in their individual capacities, but solely as trustees (the Lessor) under a Trust Agreement dated as of November 1, 1982, and **SEMINOLE ELECTRIC COOPERATIVE, INC.**, as lessee (the Lessee).

(1) The Equipment.

The Lessee hereby certifies that the Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost thereof) has been delivered to the Lessee at Material Transfer, Inc., Gulf County Canal, Port St. Joe, Florida, inspected by the Lessee, found to be in good order and accepted under the Lease, all on the date hereof.

(2) Representations by the Lessee.

The Lessee hereby represents and warrants to the Lessor and the Indenture Trustee, as such term is defined in the Lease, that on the date hereof:

(a) The representations and warranties of the Lessee set forth in the Participation Agreement, as such term is defined in the Lease, are true and correct in all material respects as though made on and as of the date hereof.

(b) The Lessee has satisfied or complied with all requirements set forth in any certificate of the Lessee, in the Lease and in the Participation Agreement to be satisfied or complied with on or prior to the date hereof.

(c) No Default or Event of Default under the Lease has occurred and is continuing on the date hereof.

(d) The Lessee has obtained, and there are in full force and effect, such insurance policies with respect to the Equipment as are required to be obtained under the terms of the Lease.

EXHIBIT B
to Lease

(e) The Lessee confirms to the Lessor that the representations and warranties made by it contained in Section 9 of the Participation Agreement are true and accurate as of the date hereof as though made on and as of such date (except to the extent that such representations and warranties relate to an earlier date) and that no event has occurred and is continuing or would result from the purchase or lease of the Equipment which constitutes an Event of Default under the Lease or an event which would constitute such an Event of Default with the passage of time or the giving of notice or both.

IN WITNESS WHEREOF, the Lessee has caused this Certificate of Acceptance to be duly executed by one of its officers thereunto duly authorized this ____ day of _____, 198_.

SEMINOLE ELECTRIC COOPERATIVE, INC.,
as Lessee

By _____
Title: Assistant Treasurer

Accepted on the date set
forth above on behalf of the
Lessor:

THE CONNECTICUT BANK AND TRUST
COMPANY and F. W. KAWAM, as
trustees,
as Lessor

By **SEMINOLE ELECTRIC**
COOPERATIVE, INC.,
as Authorized Representative

By _____
(Title)

EXHIBIT B
to Lease

**SCHEDULE 1 TO
CERTIFICATE OF ACCEPTANCE**

Description of Equipment Lessor's Expenses and Lessor's Cost:

<u>Description</u>	<u>Amount Payable to Lessee</u>	<u>Amount Payable to Vendor</u>	<u>Lessor's Cost</u>	<u>Lessor's Expenses</u>
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Total Lessor's Cost \$ _____

Total Lessor's Expenses \$ _____

EXHIBIT C
to Lease

(a) Subject to adjustment as provided in Sections 3 and 10 of the Lease and Section 11 of the Participation Agreement.

EXHIBIT D
to Lease

SCHEDULE OF CLOSING DATES

<u>Closing Date</u>	<u>Items of Equipment</u>
November 17, 1982	50
December 10, 1982	50
May 15, 1983	100